Appendix A

In the United States Court of Appeals
for the Ninth Circuit

No. 20270

National Labor Relations Board,
Petitioner,

vs.

Harrah's Club,
Respondent.

Filed—Aug 5 1966
Wm. B. Luck, Clerk

ORDER

Before: Chambers, Circuit Judge, Madden, Judge of the Court of Claims, and Hamley, Circuit Judge

The petition for rehearing and the suggestion of rehearing en banc are denied.

/s/ RICHARD P. CHAMBERS
United States Circuit Judge

/s/ J. WARREN MADDEN
Judge of the Court of Claims

/s/ FREDERICK G. HAMLEY
United States Circuit Judge

Appendix B

In the United States Court of Appeals for the Ninth Circuit

No. 20270

National Labor Relations Board,
Petitioner,

vs.

Harrah's Club,
Respondent.

Filed—Jul 11 1966
Wm. B. Luck, Clerk

DECREE

Before: Chambers, Circuit Judge, Madden, Judge of the Court of Claims, and Hamley, Circuit Judge

This cause came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against the Respondent Harrah's Club, its officers, agents, successors, and assigns, on February 12, 1965. The Court heard argument of respective counsel on May 10, 1966, and has considered the briefs and transcript of record filed in this cause. On June 14, 1966, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's order. In conformity therewith, it is hereby

Ordered, Adjudged and Decreed by the United States Court of Appeals for the Ninth Circuit that Harrah's Club, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees with regard to their union activities, membership, and sympathies; threatening employees with reprisals because of such membership, activities, and sympathies; soliciting employees to circumvent the Union as their collective bargaining representative and

deal instead directly with management; threatening employees with loss of fringe benefits in reprisal for union activities; or otherwise interfering with, restraining, or coercing employees in the exercise of the rights guaranteed under Section 7 of the Act.

(b) Discouraging membership in a labor organization by discharging, refusing to reinstate, or in any other manner discriminating against any of its employees in regard to their hire or tenure of employment or any term or condition of employment.

(c) In any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the Act:

(a) Offer to Robert H. Wetherill, immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of Respondent's discrimination against him, as set forth in the section of the Decision of the Trial Examiner of the National Labor Relations Board, entitled "The remedy."

(b) Notify the above-named employee, if presently serving in the Armed Forces of the United States of America,

of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, Social Security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and all other rights under the terms of this Decree.

(d) Post at its Club, Stateline, Nevada, copies of the notice attached hereto marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, (San Francisco, California) shall, after being duly signed by the Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to such employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the said Regional Director, in writing, within 10 days from the date of this Decree what steps Respondent has taken to comply herewith.

/s/ Wm. B. Luck,
Wm. B. Luck
Clerk

[Seal]

A True Copy
Attest: Aug 20 1966
Wm. B. Luck
Clerk
by .....

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Appendix

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A Decree of the United States Court of Appeals enforcing an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not interrogate our employees regarding their union membership, activities and sympathies; threaten them with reprisals because of such membership, activities and sympathies; solicit our employes to circumvent the Union as their collective bargaining representative, and deal instead directly with management; threaten employees with loss of fringe benefits in reprisal for the union membership, activity, or sympathies; or, otherwise, interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed under Section 7 of the Act.

We Will Not discourage membership in any labor organization by discharging, refusing to reinstate, or in any other manner discriminating against any of our employees in regard to their hire or tenure of employment, or any term or condition of employment.

We Will Offer to Robert H. Wetherill immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination by us against him.

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist said Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining, or other mutual aid or

protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement in conformity with Section 8(a)(3) of the National Labor Relations Act, as amended.

HARRAH'S CLUB
(Employer)

By
(Representative) (Title)

Dated

[Seal]

Note: We will notify the above-named employee, if presently serving in the Armed Forces of the United States of America, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 450 Golden Gate Avenue, Room 13050, San Francisco, California, 94102, (Telephone: 556-3197), if they have any question concerning this notice or compliance with its provisions.

In the United States Court of Appeals
for the Ninth Circuit

No. 20270

National Labor Relations Board,
Petitioner,

vs.

Harrah's Club,
Respondent.

[June 14, 1966]

On Petition for Enforcement of an Order of the National Labor Relations Board

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Before: Chambers, Circuit Judge, Madden, Judge of the Court of Claims, and Hamley, Circuit Judge

Hamley, Circuit Judge:

The National Labor Relations Board petitions for enforcement of its order requiring Harrah's Club to cease and desist certain unfair labor practices at the company's Lake Tahoe gambling casino in Stateline, Nevada. Respondent opposes enforcement on the ground that the Board's assertion of jurisdiction is arbitrary and an abuse of discretion, and on the further ground that the Board's findings that the company engaged in unfair labor practices are not supported by substantial evidence. The Nevada Resort Association has filed an amicus curiae brief in support of respondent's position on the jurisdictional issue.

On the jurisdictional question respondent and amicus curiae argue, in effect, that because the Board has consistently declined to exercise jurisdiction over racetracks for reasons which are equally applicable to the Nevada gambling industry, the failure of the Board likewise to exempt respondent from regulation is arbitrary and capricious.

The Board has consistently declined to exercise jurisdiction over racetracks.[1] It has done so pursuant to the authority vested in the Board under section 14(c)(1) of the National Labor Relations Act (Act), 73 Stat. 541 (1959) 29 U.S.C. § 164(c)(1) (1964).[2] The Board's rationale in exempting racetracks from regulation has been that: (a) racetrack operations are essentially local in character so that a labor dispute therein is not likely substantially to disrupt interstate commerce, and (b) racetracks are subject to detailed state regulation which, in the absence of Board regulation may, and probably will, be extended to include labor relations.[3]

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1. Chronologically: *Los Angeles Turf Club, Inc.* (1950) 90 N.L.R.B. 20; *Pinkerton's National Detective Agency, Inc.* (1955) 114 N.L.R.B. 1363; *Jefferson Downs, Inc.* (1959) 125 N.L.R.B. 386; *Hialeah Race Course, Inc.* (1959) 125 N.L.R.B. 388; *Meadow Stud, Inc.* (1961) 130 N.L.R.B. 1202; *Walter A. Kelley* (1962) 139 N.L.R.B. 744; *Hotel & Restaurant Employees Union (Resort Concession, Inc.)* (1964) 148 N.L.R.B. 208. The policy of the Board in declining jurisdiction as to racetracks, extends also to breeders and trainers of race horses *(Meadow Stud, Inc.* and *Walter A. Kelley, supra)*, and food concessionnaires at racetracks *(Hotel & Restaurant Employees Union, supra)*.

2. Section 14(c)(1) provides, in pertinent part:
"(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction. . . ."

3. See *Hialeah Race Course, Inc., supra,* at 390-391.

The Board denies that (a) of the racetrack rationale, pertaining to the local character of the industry, is applicable to the gambling industry in Nevada. The Board points out that gambling is the major industry of that state and that it annually attracts more than twenty million tourists to Nevada, entailing vast use of interstate transportation facilities.

With regard to (b) of the racetrack rationale, concerning the likelihood of future state regulation of the industry's labor relations, the Board has not taken a clear-cut position. It does not deny that the Nevada gambling industry is subject to detailed state regulation or that, in the absence of Board regulation, Nevada state regulation may, and probably will, be extended to include labor relations. Instead, it takes a firm position with regard to two matters with which the (b) rationale is not concerned. The Board asserts that the fact that Nevada has enacted detailed regulations governing the gambling industry does not prevent the Board from asserting its jurisdiction, and points out that the Nevada Gaming Act does not now govern employer-employee relationships.

The Board has statutory jurisdiction to regulate the labor relations of Harrah's Club.[4] This being true, the exercise of that jurisdiction is subject to review only on the question of whether, under the circumstances, unjust discrimination will result. See *N.L.R.B. v. W. B. Jones Lumber Co.*, 9 Cir., 245 F.2d 388, 391; followed in *N.L.R.B. v. Local Joint Executive Bd. of Hotel and Restaurant Employees and Bartenders Union*, 9 Cir., 301 F.2d 149, 153. See, also, *N.L.R.B. v. Gene Compton's Corp.*, 9 Cir., 262 F.2d 653, 656; *N.L.R.B. v. Carpenters Local No. 2133*, 9 Cir., 356 F.2d 464, 465.

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4. Under section 10(a) of the Act, 61 Stat. 146 (1947), 29 U.S.C. § 160(a), (1964), the Board is empowered "... . to prevent any person from engaging in any unfair labor practice . . . . affecting [interstate] commerce."

Assuming that the criteria applied by the Board in determining to exempt racetracks from regulation are equally applicable to gambling casinos in Nevada, this alone is not sufficient to establish that regulation of the gambling industry will result in unjust discrimination. It must also be shown that the gambling industry will be substantially prejudiced by Board regulation because racetracks are not similarly regulated. See *N.L.R.B. v. Gene Compton's Corp., supra.*

There is here no contention that the gambling industry will be so prejudiced, and there is nothing in the record to support a finding or conclusion that such prejudice will result. We therefore conclude that the Board did not act arbitrarily and did not abuse its discretion in exerting regulatory jurisdiction over respondent.

The Board found that Harrah's Club violated section 8(a)(1) of the Act, 29 U.S.C. § 158(a)(1) (1964) by coercively interrogating its employees regarding their union activities, threatening them with reprisals because of such activities, and soliciting them to abandon the union as their collective bargaining representative and deal directly with management.[5] Respondent argues that these findings are not supported by substantial evidence.

Viewing the record as a whole, we conclude that these findings are supported by substantial evidence.

The Board also found that Harrah's Club violated section 8(a)(3) and (1) of the Act, 29 U.S.C. § 158(a)(3) and (1) (1964), by discharging employee Robert H. Wetherill because of his union activities. Respondent contends that this finding is not supported by substantial evidence.

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5. The labor union involved was the International Alliance of Theatrical Stage Employees and Motion Picture Operators of the United States and Canada, Local 363, AFL-CIO (Local or Union).

As indicated by the section 8(a)(1) findings referred to above, the record is replete with evidence of respondent's hostility toward the union. Wetherill was a leading union figure. He was employed by Harrah's Club on August 30, 1962 as a sound console operator. He continued in that job at the South Shore Room of the Lake Tahoe casino until early May, 1963, when he left temporarily due to illness. On his return, on May 30, 1963, Wetherill was transferred at his request to the job of stagehand.

Early in June, 1963, Wetherill became the unsalaried business agent for the Local. About a week later he notified Robert I. Brigham, the company's director of industrial relations, of his position with the union. Several other supervisory employees learned of this soon afterward.[6] Wetherill began to organize the stagehands and, by August 9, had recruited a majority of these employees. On that date he sent Brigham a telegram requesting recognition. On August 14, Wetherill filed a representation petition.[7]

Several days after the filing of the petition and the posting of a copy on the premises, Lein and Vogt spoke to Wetherill in Lein's office. Lien asked Wetherill why he had not told Lein and Vogt about the petition. Wetherill said he did not trust Lein. Lein returned the compliment and Wetherill left. About this same time Lein told Bruce T. Lovelady, a stage technician, how Lein and Vogt had

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6. Robert Vincent, director of entertainment; Arthur Barkow, producer; Sy Lein, stage manager; and Jacques A. Vogt, chief lighting technician.

7. On September 5, 1963, respondent entered into a Stipulation for Certification upon Consent Election. A tally of ballots cast in the election, on October 14, 1963, revealed that of twelve eligible voters, eleven cast ballots in favor of the union. On October 18, 1963, respondent filed objections to the election. On February 27, 1964, the Board dismissed the objections and certified the union as exclusive bargaining representative of the employees in the unit found appropriate.

been "put in hot water" with management because they did not know in advance about the filing of the petition. Lein also told Lovelady that "as far as management was concerned they wouldn't trust Bob Wetherill any more." Asked why, Lein said it was because of Wetherill's filing of the petition "after all we had done for him," remarking that Wetherill "had stabbed them in the back."

Wetherill's employment was terminated on September 1, 1963. The reason stated on the termination slip was that Wetherill's discharge was necessary in order to make room for Charles H. Walker, a returning veteran. Seniority at Harrah's Club is determined by departments. Walker had been a member of the entertainment department before he had gone into the armed services. His seniority over Wetherill in that department is conceded and it is not disputed that he had a right to return to his job.

Respondent took the position that Walker's return made it necessary to let Wetherill go because the company was not justified in absorbing an additional employee in the entertainment department, and Wetherill was the junior man. Both of these reasons were made the subject of extensive and largely conflicting testimony, the Board's general counsel taking the position that neither reason was valid.

With regard to the company's desire to avoid any increase in the staff of the entertainment department, Vincent steadfastly maintained that the stage crew had been overstaffed. However, he took no steps to reduce the size of the crew prior to the advent of the union. Early in August, 1963, in a discussion about the possible effect upon the stagehands of the new Wage-Hour Law, Barkow told Lovelady that it appeared that the company was faced with the alternative of

scheduling a seven-hour day, six-day work week, or hiring three additional stagehands, to avoid payment of overtime.[8]

With regard to the company's assertion that Wetherill was the junior member of the entertainment department, the question came down to whether, in that department, he had seniority over Paul Jordan or Ray McNerthney. The answer to this question required exploration of several collateral issues, as to each of which the evidence was in dispute.

One of these issues was whether Wetherill was attached to the entertainment staff which he was initially employed as a sound console operator on August 30, 1962, or when he became a stagehand on May 31, 1963. If the earlier date applies, Wetherill had seniority in that department over Jordan, and also over McNerthney if the latter was ever attached to that department.

The general counsel produced evidence tending to show that the sound console operator is considered a member of the entertainment department. This evidence included the testimony of Wetherill to that effect, and a series of time slips signed by Wetherill while he was a sound console operator. The slips list the department as "Stage," which is concededly in the entertainment department. All but one of these slips were signed by Lein, the stage manager in the entertainment department.

Respondent sought to explain these time slips by attributing the "Stage" notation, and the fact that the slips were signed by a supervisor in the entertainment department, to "widespread laxity" prevailing throughout the Club in the signing of such slips. Respondent also adduced addi-

8. Barkow also volunteered that Lein and Vogt had been urging him to hire additional men because, as things were, Vogt had been obliged to do relief work at the spotlight and light board, and Lein had been complaining that he had been unable to give his men vacations and time off. The employment of two additional men, Lein said, would relieve that problem.

tional evidence tending to support its position, including organizational charts and tables showing the entertainment department as separate from the sound department.

The Examiner found that in the actual operation of the South Shore Room, respondent did not maintain such a rigid separation between the departments. The Examiner also found that the functions of the sound console operator who worked in the South Shore Room in connection with the production of shows were more directly related to those of the stage crew than those of the sound department.

The evidence is also in conflict as to whether McNerthney was ever a member of the entertainment department. It seems to be established, however, that McNerthney replaced Wetherill part-time as a sound console operator in May, 1963, and that in July, 1963, upon the direction of supervisory personnel, he began to sign his time slips as an employee of the entertainment department.[9] If McNerthney became a member of the entertainment department on either of these dates he was junior to Wetherill in that department basing the latter's seniority, as the Examiner did, on the August 30, 1962 date.

The evidence is extensive and in detail on the issue of seniority and other motivations respondent may have had in terminating Wetherill. This is likewise true of the Examiner's findings, which exhibit careful consideration and evaluation of conflicting claims and evidence. Considering the record as a whole we conclude that the Examiner's ultimate finding, adopted by the Board, that respondent discharged Wetherill because of his union activities, is supported by substantial evidence.

The petition will be enforced.

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9. Respondent had originally selected McNerthney as the one to be terminated to make room for Walker. Early in August, 1963, Producer Barkow informed McNerthney that he was to be replaced by a returning veteran, and advised him to start looking for a job.

Appendix C

150 NLRB No. 169
D-6754
Reno, Nev.

United States of America
Before the National Labor Relations Board

Case No. 20-CA-2839

Harrah's Club
and
International Alliance of
Theatrical Stage Employees
and Motion Picture Operators
of the United States and Canada,
Local 363, AFL-CIO

DECISION AND ORDER

On October 16, 1964, Trial Examiner Irving Rogosin issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Decision attached hereto. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief, and the General Counsel filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the excep-

tions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order, the Order recommended by the Trial Examiner, and orders that the Respondent, Harrah's Club, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C. Feb 12 1965

John H. Fanning, *Member*
Gerald A. Brown, *Member*
Howard Jenkins, Jr., *Member*
NATIONAL LABOR RELATIONS BOARD

(Seal)

United States of America
Before the National Labor Relations Board

Division of Trial Examiners
Branch Office
San Francisco, California

Case No. 20-CA-2839

Harrah's Club
and
International Alliance of
Theatrical Stage Employees
and Motion Picture Operators
of the United States and Canada,
Local 363, AFL-CIO

DECISION OF TRIAL EXAMINER*

Statement of the Case

This proceeding under the National Labor Relations Act, as amended (29 U.S.C. Sec. 151 *et seq.*, 61 Stat. 136), herein called the Act, is based upon a complaint issued November 21, 1963, alleging that Harrah's Club, Respondent, herein sometimes also called the Club, or the Employer, has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

Specifically, the complaint alleges that on various dates between on or about August 9, 1963, and on or about October 20, 1963, Respondent, through various named supervisors, (1) coercively interrogated employees regarding their union membership activities and sympathies; threat-

*The decision is not reproduced in its entirety; only that part which is pertinent hereto.

ened them with reprisals therefor; and solicited them to bypass their bargaining representative and deal directly with management, thereby interfering with, restraining, and coercing employees in violation of Section 8(a)(1); and (2) on or about September 1, 1963, discharged Robert H. Wetherill because of his union or other protected activities, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3), and interfering with, restraining and coercing employees in the exercise of the rights guaranteed by Section 7, in violation of Section 8(a)(1) of the Act. Respondent's answer substantially admits the jurisdictional allegations of the complaint, and the status of named persons, with the exception of Herbert Swartz, as supervisors within the meaning of the Act, and denies generally the commission of any unfair labor practices.

Upon the entire record in the case, including his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The business of Respondent

Harrah's Club, a Nevada corporation, with its principal office and place of business in Reno, Nevada, is, and at all times mentioned herein has been, engaged in the business of owning and operating restaurants and gambling casinos in Reno and Stateline, Nevada. During the past year, Respondent in the course of its business operations purchased and received goods and materials valued in excess of $50,000 directly from points outside the State of Nevada. During the same period, Respondent sold goods, merchandise and services valued in excess of $500,000.

* * *

III. The unfair labor practices

A. *Interference, restraint and coercion*

1. Chronology of events

a. *Introduction*

The business of Respondent consists of the operation of gambling casinos and restaurants, known as Harrah's Reno, Harrah's Bingo, Harrah's Casino and Restaurant, located in Reno, Nevada, and Harrah's Lake Tahoe and Harrah's Tahoe, located at Lake Tahoe, in Stateline, Nevada. Harrah's Tahoe is the largest of these operations, and contains the South Shore Room, a theatre-restaurant accommodating upwards of 700 guests and featuring many of the outstanding performers in the entertainment industry. Also located in this casino is the Stateline Lounge, which features continuous entertainment around the clock. This proceeding concerns the stage technicians who provide the technical services for stage productions in the South Shore Room.

There is no dispute as to the supervisory status of management personnel, excepting Herbert Swartz, responsible for the production of the shows, at the times mentioned in the complaint. They are:

Robert I. Brigham, Director of Industrial Relations
Robert (Bob) Vincent, Director of Entertainment
Arthur Barkow, Producer
Sy Lein, Stage Manager
Jacques A. Vogt, Chief Lighting Technician
Joseph L. Sheeketski, Shift Manager[3]

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3. Also mentioned in the complaint as a supervisor is William Ross, who is alleged to have engaged in interrogation of employees. During the hearing, the allegations of the complaint with respect to this alleged supervisor were amended to substitute the name of Ian Griggs as the supervisor alleged to have engaged in these activities. Upon motion of the General Counsel, these allegations insofar as they related to Ian Griggs were stricken from the complaint.

Among other management representatives who figured prominently in the events which occurred, or who have been mentioned in the course of the proceedings, were Rome Andreotti, vice-president of administration, and Kenneth E. Clever, assistant manager in charge of operations and personnel. The status of Swartz, head of the sound department during the early stages of the events described hereinafter, will be considered in connection with the alleged discriminatory treatment of Wetherill.

B. *Discrimination in regard to hire and tenure of employment of Robert H. Wetherill*

Robert H. Wetherill was employed by Respondent on August 30, 1962. Hired as sound console operator, by Herbert Swartz, sound technician in charge of the sound equipment at the Club, Wetherill continued in that job at the South Shore Room until early in May 1963, when he left due to illness. On his return, about May 30, he was transferred at his request to the job of stagehand. His wages as sound console operator had been $25 a day, in contrast to $24 a day for stagehands. When he brought this to Brigham's attention shortly afterwards, his pay was adjusted to $25. For the first week of his employment as a stagehand, he worked on the AC lighting board, under the supervision of Lighting Director Vogt. A week or 10 days later, at Wetherill's request, Vogt relieved him of that assignment, and Wetherill was then assigned to the "deck" or stage.

Early in June 1963, Wetherill became unsalaried business agent for the Local. About a week later, he notified Director of Industrial Relations Brigham of his position with the Union. Vincent, Barkow, Lein and Vogt learned of this soon afterward. When asked by Vogt about his future plans, Wetherill told him that he had none as yet.

Wetherill began to organize the stagehands, and by August 9 had recruited a majority of those employees. On that date, he sent Brigham the telegram requesting recognition. On August 14, Wetherill filed the representation petition. The events which followed have already been described.

On August 30, Entertainment Director Vincent instructed Barkow to have Wetherill notified that he was to be terminated September 1. In the absence of Stage Manager Lein, Barkow told Lovelady, (who, as has already been mentioned, occasionally substituted for Lein), that Wetherill was to be terminated during the second show the following night. Barkow told Lovelady to have Wetherill report to Barkow at that time, and asked Lovelady to keep the matter confidential. Lovelady asked Barkow the reason for the termination, and Barkow said that it was to make room for a returning veteran.

When Wetherill reported to Barkow as directed, Barkow began by saying that he was at a loss to understand what Wetherill had against him, unless it was the temporary reduction in his daily rate following his transfer from the job of console operator to that of stagehand. Barkow then told Wetherill that he was being terminated as of the end of the show that night. Wetherill asked whether he was being selected as "the first to go" because he was "the youngest man," and inquired, "What about Paul Jordan?" Barkow replied, according to Wetherill, "Oh, he is just an apprentice." Wetherill asked whether he was being terminated because of the Union. Barkow said that he was not, and showed Wetherill his termination slip, which gave as the reason for termination the return of an employee from the armed forces. Wetherill was thereupon terminated,

effective September 1, and, after a delay of several days, received his final paycheck.

A meeting of the Board of Review was originally scheduled for September 13, 1963, to consider Wetherill's protest against his discharge.[40] Due to an apparent lack of communication between the parties, Wetherill, who was attending a representation election at another gambling casino, in the outlying area, did not appear. Some of the discussion at this abortive meeting of the Board of Review has been previously detailed.

During this episode, Brigham, after examining Wetherill's personnel jacket, inquired whether the other members of the Board were aware that Wetherill had been convicted of a crime.[41] Clever said that he was not, and wondered aloud how Wetherill came to be hired under those unusual circum-

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40. The Board of Review, as described in the employees' handbook and the testimony of Respondent's witnesses, consists of three voting members, namely, the Club Manager, the Director of Industrial Relations, or their representatives, and an employee representative elected by the fellow-employees in his department. Although, according to the handbook, the Board is empowered to deal with "all types of problems," its primary function is to handle grievances not satisfactorily resolved by the supervisor, or by resort to the "gripe" box. Under the applicable section, the decision of the Board of Review is final.

41. Wetherill had been convicted, after a plea of guilty, of violation of Federal statutes prohibiting the sending of obscene material through the mail. This evidence was adduced on Wetherill's direct testimony, Wetherill admitting that he had received a suspended sentence of one year, on each of two counts, and been placed on probation. No record of conviction was offered by Respondent, presumably because of his admission. In view of the circumstances under which the evidence was introduced, it is not altogether clear whether Respondent was relying on this conviction as ground for impeachment. On the assumption that Respondent so intended, the undersigned has carefully considered the evidence of this conviction in passing upon Wetherill's credibility. However, in view of the substantial corroboration by other witnesses, whose testimony has been credited, of Wetherill's testimony on many of the salient facts, the undersigned finds that his credibility has not been adversely affected by the evidence of his conviction.

stances. Further examination of Wetherill's file revealed that Wetherill had been recommended by Herbert Swartz, the sound engineer who claimed to have known Wetherill for 20 years. Brigham further observed that Wetherill's previous employment had consisted of work as an "odd job man" in a hospital, and, previous to that, as a liquor store manager, earning half as much as stagehands at the Club. When Clever expressed surprise that Wetherill had been employed as a sound man, in view of his background, Brigham remarked that it had undoubtedly been due to Swartz' intervention. Rux, however, told them that he believed that Wetherill, as an IATSE member, has worked as a stagehand prior to his employment at the Club.

Two days later, on September 15, the Board of Review again convened. The same management representatives were present; Lovelady attended as employee representative.

The Board was in session for about 30 minutes before Wetherill was admitted. Clever read Wetherill's request for a hearing which stated the grounds for his grievance. Brigham then produced the personnel records of the stage crew, and, selecting Wetherill's jacket, examined his employment records. Brigham again called attention to Wetherill's record, and the fact that he had been hired by Swartz.

Clever asked Lovelady which members of the crew he considered had less seniority than Wetherill. Lovelady mentioned Paul Jordan and Ray McNerthney. Turning to their personnel records, Clever maintained that Jordan had become a member of the stage crew in November 1962, while Wetherill had not joined the crew until May 1963, and was, therefore, junior to Jordan. As to McNerthney, Clever contended that he had never been employed in the entertain-

ment department, but had been, and still was, in the sound department. Lovelady said that, as far as he was aware, there had been no sound department at the Club for months. Clever insisted that the sound department had never been abolished, even though the position of head sound engineer had been eliminated, Lovelady argued that since July 1963, on instructions from Stage Manager Lein, McNerthney had been making out his time slips showing him in the entertainment rather than the sound department. Clever left the room to verify this and, upon returning, announced that as far as their records were concerned McNerthney was still in the sound department, currently assigned to maintenance.

With respect to Jordan, after referring to his personnel records, Brigham stated that Jordan was still assigned to the food stores department, and was only on loan to the stage or entertainment department for the 10 months he had been working on the stage crew. Lovelady, therefore, maintained that Jordan was only a temporary employee, not permanently assigned to the stage, and that even if the date of his temporary assignment to the stage was earlier than Wetherill's, Jordan rather than Wetherill should have been terminated. At this juncture Wetherill was admitted to the meeting.

According to Wetherill, Brigham asked him why he had requested the meeting. He replied that he thought his termination was "unfair" because there were others on the stage crew who had less seniority than he. Brigham countered by asking him whether he thought they had been "unfair" when they hired him in spite of his criminal record, and paid him during his illness.

Clever asked Wetherill to state the basis for his grievance. Wetherill stated his position, substantially as Love-

lady had outlined it to the Board members. Clever countered with the same replies he had made to Lovelady, concluding with the statement that Wetherill had less seniority than any other member of the stage crew. Wetherill, contending that the job of sound console operator was part of the entertainment department, insisted that his seniority should date from August 30, 1962, when he was hired on that job, rather than May 31, 1963, when he joined the stage crew, thus giving him more seniority than Jordan or McNerthney. Clever asked Wetherill who had been his supervisor while he worked as sound console operator. Wetherill named Lein. Clever vehemently disputed this, emphasizing his disagreement with a vulgar epithet.

After extended argument, Wetherill was excused. Clever announced that he would be governed by the records, and decided that Wetherill was the last stagehand hired, and, therefore, properly terminated. Lovelady conceded that, while "on paper" management might be correct, as a practical matter, it had been wrong in terminating Wetherill. By a vote of 2 to 1, Clever and Brigham concurring, the Board sustained Wetherill's termination. Wetherill was then summoned and notified of the Board's decision, Brigham consoling him with the reminder that, since he had already filed charges with the Regional Office of the Board, he would have a further opportunity to present his case.

Under date of September 16, 1963, a notice announcing the decision of the Board of Review was posted on the bulletin boards at the Club.

Analysis of contentions concerning Wetherill's discharge; conclusions

As is already evident, Respondent contends that the sole reason for Wetherill's discharge was the necessity for

restoring Walker, the returning veteran, to his former job on the stage crew.[45] There is no issue regarding Walker's seniority or his right to the job. Since, in Respondent's view, Wetherill was the stagehand with least seniority, it decided to dismiss him to make a place for Walker. According to Respondent, this was its first experience in dealing with a returning veteran, and Brigham and Vincent conferred to decide how to comply with the law. After discussing the size of the stage crew, Brigham asked Vincent whether he could "absorb another man." Vincent replied that he was already over-staffed, and he was being criticized for maintaining a much larger stage crew than any comparable casino in Las Vegas. Vincent asked Brigham whether there was any other place for Walker but Brigham said that it would be preferable to reinstate Walker to the job he had held before his induction.

Although Wetherill did not become a stagehand until May 31, 1963,—after the "appraisals" of the individual members of the stage crew had been made,—Brigham and Vincent reviewed these appraisals and concluded that Wetherill would be the logical man to go. Brigham concurred in this decision.

If, as Respondent contends, Wetherill's seniority was based on the date of his assignment to the job of stage technician, May 31, 1963, then it would appear that he had less seniority than any of the other stage technicians. The General Counsel contends, however, that Wetherill's seniority should have commenced on August 30, 1962, when he was initially employed as a sound console operator under the supervision of Herbert Swartz. Based on this date

45. Although there was some suggestion that Wetherill's work performance may have left something to be desired, both Brigham and Respondent's counsel categorically stated that this was the sole reason for Wetherill's discharge.

of hire, the General Counsel contends that Wetherill had seniority over at least two employees, Jordan and McNerthney.

As to Jordan, the record discloses that he was first hired in September or October, 1960, as a waiter in the food service department. He continued in that job through May, 1961, when he left for the summer. Returning in about October of that year, he worked as a clerk in the food stores department until about May, 1962. While still employed in that department, he was given a training course, and, on November 27, 1962, became an apprentice stage technician, working on the production of THE FLOWER DRUM SONG as his first assignment. The first week of January, 1963, Stage Manager Lein instructed him to sign his time slips thereafter as stage technician in the Entertainment Department, although, as has been seen, the Personnel Department continued to show him as on loan from food stores. The General Counsel contends, therefore, that Jordan's seniority date should be January, 1963, when he was first recognized as a full-fledged stage technician, or, at the very earliest, on November 27, 1962. In either case, this would make Jordan junior to Wetherill, if August 30, 1962, the date of his initial hiring, were considered controlling for purposes of seniority. Respondent, however, contends that, even if the January, 1963 date is used to determine Jordan's seniority, he would have seniority over Wetherill, based on the May 31, 1963, date, when Wetherill became a stagehand.

There are, however, some remarkable circumstances in respect to the issue of Jordan's seniority. In July, 1963, soon after he learned of Walker's imminent return, Jordan went to Stage Manager Lein and told him that he felt "it would be better to solidify [his own] position before

Walker came back or [he] would be the logical one to be bumped." Lein promised to "attempt to make [him] a stage technician." The day after Wetherill's discharge, Lein told Jordan that he was "a lucky [s-o-b] because they ruled that Wetherill was the junior man as far as the seniority and [Jordan] was kept on."

As to McNerthney, Respondent contends that he was never an employee of the Entertainment Department, (which is under the overall supervision of the Vice President, in charge of public relations) but of the Sound Department, which is a separate department under the direct supervision of the Sound Engineer, (who is under the overall supervision of the Manager of Construction and Maintenance).

McNerthney was first hired by the sound engineer on May 14, 1962, and worked as sound maintenance man in the casino for about a week. At about that time, Herbert Swartz succeeded to the sound engineer's job, and McNerthney was assigned to the job of sound console operator in the South Shore Room, where he worked for about four months, seven days a week, until Wetherill was hired as sound console operator. McNerthney then returned to the job of sound maintenance man, working at that job until Wetherill became ill early in May, 1963. Swartz then operated the sound console, and McNerthney relieved Swartz on his days off, working three days a week on sound maintenance in the casino, and two days, in the South Shore Room. About mid-July, 1963, Austin Raymer, director of maintenance, complained that his department was being charged with McNerthney's entire salary, although he was only working for him three days, and for the South Shore Room, two days. Raymer discussed this with Vincent, Swartz, Barkow and McNerthney, and as a result, Swartz and Lein instructed McNerthney to

sign his time slips as an employee of the Entertainment Department, informing him that he would thereafter be assigned exclusively to the South Shore Room. Since then, McNerthney has been employed in that room, operating the sound console on Swartz' days off and on vacations, and the sound equipment the remainder of the time.[47]

With respect to the issue of seniority in general, and McNerthney's, in particular, the record also reveals a singular set of circumstances. Thus, early in August, 1963, Producer Barkow informed McNerthney that he was to be replaced by a returning veteran, and advised him to start looking for another job, while assuring him of at least a month's employment, and offering to help him obtain other employment, and promised to furnish him with a reference.

About a week later, Vogt told McNerthney that as a result of a meeting between Lein, Barkow, Vogt and Swartz, it had been decided, in view of his electrical background, to assign McNerthney to the lighting department under Vogt, to assist in maintaining the light equipment, and to act as a relief spotlight operator. Thus, instead of terminating McNerthney, Respondent's supervisors found a job for him elsewhere in the Club. At the same time, Vogt told him that Norman Julian, (who had worked at the Club for a week in June learning the sound console operation), would be coming to work in the sound department, to relieve Swartz on his days off, and to do some work in the lighting department.

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47. Although McNerthney claimed that he also performed "stage work," such as "opening the room," which included mopping the stage, setting the curtains, and adjusting the lights, he was instructed by Brigham and Vogt, in about mid-August, not to "touch anything else on the stage," and to confine his duties "strictly to sound equipment work."

In the latter part of August, McNerthney asked Vogt when Julian was coming to work. Vogt told him that management "would make no changes until the union situation was clarified."

On the basis of this evidence, the General Counsel maintains that McNerthney became a member of the Entertainment Department, in May, 1963, when he replaced Wetherill as sound console operator. Based on the assumption that Wetherill's seniority began August 30, 1962, when he was first hired as console operator, the General Counsel contends that Wetherill also had more seniority than McNerthney at the time of his discharge.[48]

Respondent, on the other hand, maintains that, since McNerthney never was in the Entertainment Department, but always was in the Sound Department, the question of his seniority is irrelevant because Respondent made its selection of the employee to be terminated on the basis of seniority among the stage crew.

To substantiate their contention that management actually regarded the sound console operator as part of the stage crew, the General Counsel and the Charging Party introduced time slips applying to this job signed by stagehand supervisors.[49]

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48. It may be noted that McNerthney voted for employee representative of the stage technicians on the Board of Review in an election held in October, 1963. He did not, however, vote in the representation election for bargaining agent.

49. According to Wetherill, after he had been working as console operator for about a month, the job was placed under the Entertainment Department, and Stage Manager Lein told him that he would thereafter sign his time slips. Ten slips, signed by Wetherill, dated November 7 to 12, and November 16 to 18, both inclusive, and December 14, 1962, were introduced in evidence. All list the department as "Stage," and the job classification as "Console Opr." Except for the slip, dated November 11, which is signed by Barkow, all are signed by Lein, as supervisor.

Respondent attempts to meet this evidence by pointing to evidence that, contrary to express instructions in the employees' handbook, requiring employees to follow specified procedures in signing time slips, as a prerequisite to obtaining their paychecks, widespread laxity prevailed throughout the Club in the signing of such slips by supervisors. Thus, according to Brigham, it was common practice during 1962 and 1963, for supervisors to sign time slips for employees who were not under their supervision. In numerous instances, non-supervisory employees signed time slips, ostensibly as supervisor, frequently actually signing the name of a supervisor.[50]

In further support of his position on the seniority issue, the General Counsel relies upon the fact that in the Stipulation for Consent Election, the sound console operator is included with the stage technicians in the description of the appropriate unit. This overlooks the fact that the

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50. Brigham testified that some 17,000 such slips are used weekly for the 4000 employees at the Club. According to him, these slips are not used for payroll purposes, although they establish the shift and number of hours worked, but for the sole purpose of furnishing President Harrah with a daily profit and loss statement. Brigham testified that, in accordance with Respondent's business practices, time slips for 1963, have been destroyed. However, Respondent introduced 26 time slips, all but two dated the latter part of January, 1964, the remaining two, September, 1963. The two in 1963 had been preserved, according to Brigham, in connection with objections to an election among Respondent's culinary workers. Some of these slips were signed by a secretary of a supervisor; others bore names of non-supervisory personnel. None of the slips covered stage employees, but, for the most part, such departments as customer relations, bar, premium booths, commissary, restaurant, etc. These slips can scarcely be regarded, as Brigham claimed, a randum sampling, and were of negligible probative value. They furnish scant support for Brigham's testimony that probably as many as 50 percent of the time slips were signed by persons other than supervisors of the particular employees, or by unauthorized personnel. Brigham admitted that normally the supervisor of the employee involved would be the person to sign his time slip, if he were available.

Stipulation was not entered into until Sepember 5, 1963, four days after the termination of Wetherill's employment. It would be manifestly improper to view this as a restrospective admission by the Employer that the sound console operator was a part of the stage crew. Moreover, it ignores the fact that the Employer specifically qualified the Stipulation by a provision that inclusion of the sound console operator in the appropriate unit, and his eligibility to vote in the election, would not be binding upon the Employer in any other proceeding. The undersigned has placed no reliance on the fact that the sound console operator is included in the description of the unit in reaching his conclusions.

Despite the evidence adduced by Respondent, including the organizational charts and tables purporting to establish the Entertainment Department, including the stage crew, as separate from the Sound Department, the record as a whole indicates that, in the actual operations of the South Shore Room, Respondent did not maintain such a rigid separation between the two departments as it contended at the hearing. The record supports a finding that the functions of the sound console operator who worked in the South Shore Room in connection with the production of the shows, were more directly related to those of the stage crew than those of the Sound Department. Thus, a tenable basis exists for concluding that the job of sound console operator was actually in the Entertainment Department, and since Respondent contends that it applied departmental seniority in making its selection, Wetherill should not have been discharged. It is significant that Respondent adduced no evidence that there had existed, prior to Wetherill's discharge, a policy of seniority, whether departmental or company-wide, in the event of a

reduction in force. The evidence establishes merely that Respondent claimed to have applied the principle of departmental seniority, and, by contending that Wetherill's previous services had been performed outside the department, justified his discharge.

It may be conceded that it is not within the province of the Board to decide whether, in discharging Wetherill, Respondent acted fairly, justly or reasonably; whether it used criteria such as seniority, departmental or otherwise; or whether it discharged him for just cause, or, indeed, for none at all. We are concerned only with whether in discharging the employee, Respondent was motivated by discriminatory reasons proscribed by the Act. And, in making this determination, it must be borne in mind that existence of a valid cause for discharge, is no defense where the employer's actual motive is to discourage union membership. As the Court has said:

> We observe preliminarily that where, as here, contradictory reasons for the discharge of an employee are advanced, it is the responsibility of the Board to weigh the evidence and resolve the factual conflict. N.L.R.B. v. WTVJ, Inc., 268 F. 2d 346 (5th Cir. 1959); N.L.R.B. v. West Point Mfg. Co., 245 F. 2d 783, 786 (5th Cir. 1957); N.L.R.B. v. Wagner Iron Works, 220 F. 2d 126, 135 (7th Cir. 1955); cert. den. 350 U.S. 981; N.L.R.B. v. Whitin Machine Works, 204 F. 2d 883, 885, (1st Cir. 1953); N.L.R.B. v. Electric City Dyeing Co., 178 F. 2d. 980, 982 (3rd Cir. 1950). There is clearly no obligation on the Board to accept at face value the reason advanced by the employer. The concurrent existence of an otherwise valid reason for the discharge of an employee does not preclude a factual determination that his discharge was discriminatory if it appears from a preponderance of evidence, and the reasonable inferences drawn therefrom, that the discharge was in fact motivated by the employer's opposition to the employee's union activities. Ibid.

Since, however, there is no magic touchstone by which the trier of facts can determine with absolute certitude the motivations which prompt an employer's conduct in terminating the employee, we must look to the evidence, circumstantial, as well as direct, and the reasonable inferences therefrom.

The record is replete with evidence of Respondent's hostility toward the Union; its systematic interrogation of employees; threats of reprisals; studied attempts to persuade the employees to renounce the Union and deal directly with the employer; its bitter resentment toward Wetherill for what it considered his base ingratitude in organizing the crew, after the favors it had shown him; and other acts of interference, restraint and coercion, previously detailed. When there is considered against this background the undenied remark of Swartz, Wetherill's former supervisor, to Jordan, two days after Wetherill's discharge, to the effect that Wetherill "had had his neck stuck out a mile because of the union business," Respondent's motivation becomes increasingly apparent.[53]

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53. Swartz was not called to testify, and there was no showing that he was unavailable. It may, therefore, be assumed that his testimony would have been adverse to Respondent. As to Respondent's contention that he was not a supervisor at the time he made the remark, the record discloses that, although the job of sound technician was abolished, Swartz, himself, assuming the duties of sound console operator, there was no showing that he had been relieved of his supervisory duties, and that the employees had been so advised. Moreover, since the views he expressed reflected similar views of other responsible supervisors and management officials, the undersigned finds that his remarks are attributable to Respondent. It is true, as Respondent argues, that most of the incidents which have been adverted to occurred after September 1, the date of Wetherill's dismissal. This, however, does not preclude the consideration of this evidence in evaluating Respondent's motive for the discharge, first, because it is reasonable to assume that Respondent's opposition to the unionization of its employees did not develop suddenly, but had existed both before and after the event of the discharge; second because they furnish evidence of

Further evidence of Respondent's actual motivation is to be found in the circumstances which immediately preceded Walker's return to work. This evidence discloses that after agreeing with Walker that he could report for work on September 4, Barkow made an urgent call to Walker several days earlier, asking him to report for work on September 1. This prompted Walker to ask whether "somebody had broken a leg." Barkow admonished him to "keep his mouth shut." Although Respondent contended that its true purpose in advancing the date of Walker's return, was to afford him a chance to become "reoriented" to the stage, this explanation was wholly unconvincing. The evidence reveals that there was an unusual need for manpower at the time in connection with the assembling and rigging of heavy scenery for the show opening the following week, and Wetherill was actually working on this scenery when he was summarily terminated, rather than laid off, ostensibly to make room for an employee who admittedly required a period of reorientation.

It is significant that, although Vincent had steadfastly maintained that the stage crew had been overstaffed, he at no time took any steps to reduce the size of the crew

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the employer's underlying motive. As the Court has held in an analagous situation, "The company contends that any antiunion statements made by company officials, after . . . the date of [the employee's] discharge, have no relevancy. We do not agree. Such statements, reflecting the attitude of the company toward the union at a period closely following the date of [the] discharge, indicate what its attitude undoubtedly was immediately preceding that event. *Joy Silk Mills, Inc. v. N.L.R.B.*, 87 U.S. App. D.C. 360, 185 F. 2d 732, 742." *Angwell Curtain Company, Inc. v. N.L.R.B.*, 192 F. 2d 899, 903 (C.A. 7). See, also, *N.L.R.B. v. Entwistle Manufacturing Company*, 120 F. 2d 532, 535 (C.A. 4); *N.L.R.B. v. Homedale Tractor & Equipment Company*, 211 F. 2d 309, 314 (C.A. 9); *N.L.R.B. v. Cousins Associates, Inc.*, 283 F. 2d 242, 243 (C.A. 2).

prior to the advent of the Union. In this regard, it should be noted that the dismissal of Wetherill made no difference in the size of the crew, because his position was filled by Walker.

Finally, the record discloses that early in August, 1963, in a discussion about the possible effect upon the stagehands of the new Wage-Hour Law, Producer Barkow told Lovelady that it appeared as if Respondent was faced with the alternative of scheduling a seven-hour day, six-day workweek, or hiring three additional stagehands, to avoid payment of overtime. Barkow volunteered that Lein and Vogt had been urging him to hire additional men because, as things were, Vogt had been obliged to do relief work at the spotlight and light board, and Lein had been complaining that he had been unable to give his men vacations and time off. The employment of the two additional men, Lein said, would relieve that problem.[54]

Upon the basis of the foregoing, and upon the preponderance of the credible and reliable evidence, considered on the record as a whole, the undersigned is convinced and finds, that Respondent discharged Wetherill because of his union activities, thereby discriminating in regard to the hire or tenure of his employment to discourage membership in a labor organization, in violation of Section 8(a)(3), and interfering with, restraining or coercing

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54. Although it later developed that the amendment to the Fair Labor Standards Act did not affect the employees involved, according to Barkow, he did not learn of this until sometime in October, and Brigham testified that he did not receive a formal ruling to this effect until November 21, 1963, (a date which he recalled as the day before the late President Kennedy's assassination). In either case, this was not until over a month after Wetherill's discharge on September 1.

employees in the exercise of the rights guaranteed in Section 7, in violation of Section 8(a)(1) of the Act.[55]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in Section III above, occurring in connection with its operations described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, by the conduct described above, it will be recommended that Respondent be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having also found that Respondent violated Section 8(a)(1) and (3) of the Act by discharging Robert H. Wetherill, it will be recommended that Respondent offer him immediate and full reinstatement to his former or substantially equiv-

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55. The undersigned has considered Respondent's argument that the decision of the Board of Review upholding Wetherill's discharge should be accorded the same weight as an arbitrator's decision and award. The hearing before the Board of Review amounted to little more than the submission of a grievance to a Board consisting of two representatives of management and one employee representative. The Board was created by the unilateral action of the employer under a procedure outlined in the employees' handbook. It was not the terminal point of a grievance procedure established by contract. It was accompanied by none of the safeguards for a full and complete hearing, such as opportunity for cross-examination, representation by counsel, and assurance of a fair and impartial hearing.

alent position without prejudice to his seniority or other rights and privileges and make him whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of Respondent's offer of reinstatement, less his net earnings during said period, in a manner consistent with Board policy, as set out in *F. W. Woolworth Company,* 90 NLRB 289. Interest on backpay shall be computed in the manner set forth in *Isis Plumbing & Heating Co.,* 138 NLRB 716.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

VI. Conclusions of Law

1. Respondent, Harrah's Club, is, and at all times mentioned herein, has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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3. By discharging Robert H. Wetherill on or about September 1, 1963, because of his union or other protected activities, Respondent has discouraged membership in a labor organization in violation of Section 8(a)(3), and has thereby interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7, thereby violating Section 8(a)(1) of the Act.

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5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record of the case, the undersigned recommends that Respondent, Harrah's Club, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

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(b) Discouraging membership in a labor organization by discharging, refusing to reinstate, or in any other manner discriminating against any of its employees in regard to their hire or tenure of employment or any term or condition of employment

* * * * * * *

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Robert H. Wetherill, immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of Respondent's discrimination against him, as set forth in the section of this Decision and Recommended Order entitled "The remedy."

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(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, Social Security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and all other rights under the terms of this Recommended Order.

(d) Post at its Club, Stateline, Nevada, copies of the notice attached hereto marked "Appendix." Copies of said

Twentieth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to such employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twentieth Region, in writing, within 20 days from the date of the receipt of this Decision and Recommended Order, what steps Respondent has taken to comply herewith.

Dated: Oct 16 1964

/s/ IRVING ROGOSIN
Irving Rogosin
Trial Examiner

Appendix D

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151 et seq.) are as follows:

Short Title and Declaration of Policy

Sec. 1.(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantial minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Findings and Policies

Sec. 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to

strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

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Definitions

Sec. 2.(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

Sec. 2.(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

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Limitations

Sec. 14.(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the

Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employees, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided,* That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

Sec. 14.(c)(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.